

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7735 of 1992
WITH SPECIAL CIVIL APPLICATIONS NO.7490/92, 7493/92
AND 11431/93.

Date of decision: 22-4-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

L D PUJARA

Versus

VANKANER NAGARPALIKA

Appearance:

MRS DT SHAH for Petitioner
MR MEHUL S SHAH for Respondent No. 1
MR H. L. JANI for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/04/97

ORAL JUDGEMENT

The facts and ground of challenge in all these four petitions are common and as such they are being disposed of by this common order.

SCA 7735/92:

The petitioner was appointed as workman on fixed salary of Rs.20/- in the respondent Municipality along with many other persons. Services of 24 persons along with the petitioner were terminated on 22nd April, 1984. Industrial dispute has been raised by the petitioner along with the aforesaid persons. During pendency of the dispute before the Labour Court all other persons except the petitioner, Jitendra Chatrabhuj Devmorari and Kishor Vrajlal Solanki were taken back in their respective employment in the year 1985 and 1986 on gradation salary. Hence the petitioner has filed the present petition making prayer that the respondents may be directed to grant him time-scale of Rs.950-1500 from January 1985 with all monetary benefits.

SCA 7490/92:

The facts of this case are identical to the facts of special civil application No.7735/92. The petitioner made prayer in this case for direction to the respondents to grant him time-scale of Rs.260-450 from 1986 onwards with all consequential benefits.

SCA 7493/92

The petitioner herein was appointed as typist in the month of January, 1983 on fixed rate of Rs.200/- per month in the office of Vankaner Municipality. His services came to be orally terminated on 21st April, 1984 along with 20 other employees. During the pendency of the dispute, except the petitioner, Dalit Dalpatram Pujara and Jitendra Chatrabhuj all were taken in service and they have been given gradation salary. However, after the award was made in the pending reference, the petitioner, Dalit Dalpatram Pujara and Jitendra Chatrabhuj have been reinstated in employment. The petitioner is at present working as clerk from 11-6-1992, in pursuance to the notice in contempt application No.977/92. The respondent Municipality has passed resolution No.26 on 30th April, 1991 wherein it has been resolved to give gradation salary to the petitioner. Appeal has been filed by one of the members of the Nagar Palika before the Collector, and the Collector has passed injunction order during the pendency of the appeal, directing that so far as Resolution No.26 is concerned, the employees other than whose cases are decided by the Court may not be given effect to. It is

not in dispute that the aforesaid order was made without hearing the petitioner. The petitioner prayed for direction to the respondents to grant him time-scale of Rs.950-1500 from January, 1985 with all consequential benefits.

SCA 11431/93:

This petition is directed against the award dated 15-4-1993 passed by the Industrial Tribunal, Gujarat, Rajkot, as far as it did not specify the date from which the concerned workmen including the petitioner would have been entitled to benefits of permanent service. The dispute was raised by Vankaner Nagarpalika Karmachari & General Labour Workers Union, Vankaner. The said dispute has been referred to the Industrial Tribunal as per the notification dated 28th April, 1985. Along with the said dispute, several identical references were consolidated. The dispute pertains to giving benefits of regularisation, permanency and pay-scale to daily wagers working in the office of Vankaner Nagar Palika. Though the claim of the workmen has been accepted, in the operative part of the award the Industrial Tribunal ordered, "references are allowed and it is hereby ordered that the employees are declared to be permanent employees from the date on which they have been already absorbed, and are paid pay and allowances equal to other regular permanent employees. The period from the date of first joining until such date would be considered notional period of continuity for the purpose of retirement benefits".

2. Heard the learned counsel for the parties.

It is not in dispute that the Nagar Palika has taken decision to give pay-scale to the petitioners in three cases and in one case the Labour Court has passed award in favour of the petitioner. The award was there but the date from which such benefit has to be given was to be specifically mentioned. So in that writ petition the grievance is only of date, from which the petitioner will get benefit in the regular pay-scale and other consequential benefits, to be mentioned. However, so far as other petitioners are concerned, it is true that the Collector has stayed the resolution passed by the Nagar Palika for giving them the pay-scales; but in view of the fact that the Industrial Tribunal, in the case of other persons, has decided that the persons who are working for years together should be given pay in the regular pay-scale and other benefits, other petitioners are also entitled for the same benefits. They may not be parties to the reference, or they would not have filed separate reference, but the fact remains that dispute has also

been raised by the workers' Union and reference of that dispute has been made to the Tribunal. So the award has general applicability, that is, it is applicable to all the persons who are similarly situated, irrespective of the fact whether individual dispute has been raised or not. The order of the Collector staying the operation of Resolution No.26 of the Nagar Palika will not supersede or overrule the decision of the Tribunal. Moreover, in the matter of regularisation in service and giving of pay-scale to daily wagers or workers working on consolidated salary, those are persons similarly situated and only on the ground that in the case of some persons Nagar Palika has taken decision and it has been stayed by the Collector it will not come in their way. The benefits of the decision of the Labour Court or Tribunal have to be extended to all the petitioners. The counsel for the respondents are unable to make out any distinction between the cases of the petitioners and others who have challenged the Tribunal's award partly in whose case the award has been made.

3. The next question which arises for consideration is from which date the petitioners should have been given the benefits of the award made by the Industrial Tribunal. The matter will not detain me much, as the Nagar Palika has given benefits of pay-scale and other benefits to many of the daily wagers, and as such these petitioners should be given the same benefit from the date on which the persons having lesser service than the petitioners have been given those benefits . In case the persons having lesser service than the petitioners have not been given the benefits, then the benefits are to be given from the date on which these petitioners have completed five years' service. Five years ' service has to be counted in such a way that one year's service has to be taken for each year in which the petitioners have worked for 240 days or more.

4. In the result all these petitions are succeed, and the same are allowed. The respondent Nagar Palika is directed to give the benefits of the award of the Industrial Tribunal to all the petitioners from the date on which persons having lesser service than the petitioners as daily wagers or working on consolidated salary were given the benefits of regularisation and regular pay-sale. In case no such employee is there, then the benefits shall be given to the petitioners from the date they completed five years' service as daily wagers or on consolidated salary. The period of five years shall be counted by taking each calender year in which the petitioners have worked for 240 days or more as

a year. Rule made absolute in the aforesaid terms. No
order as to costs.

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